IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No. 574 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge?

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HETAL KIRITBHAI RAVAL - Applicant(s)
Versus
THE STATE OF GUJARAT - Respondent(s)

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Appearance :
MR BC DAVE for Applicant(s) : 1,
MR M.R.MENGDEY, ADDL. PUBLIC PROSECUTOR for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 17/07/2007

ORAL JUDGMENT

1. By way of this petition under Articles 226 and 227 of the Constitution of India read with

Section 482 of the Criminal Procedure Code, the petitioner – original accused has prayed for an appropriate writ, direction, order quashing and setting aside the order passed by the learned Chief Judicial Magistrate, Ahmedabad (Rural) dated 28.02.2005 and confirmed by the learned Additional Sessions Judge, Fast Track Court No.2, Ahmedabad (Rural) dated 11.04.2005 granting application of the prosecution for police custody of the applicant for three days.

2. That a criminal complaint has been filed against the original accused at Satellite Police Station I-CR No. 1145/2004 for the offence punishable under Sections 365, 395, 294-B, 506(2) and 114 of the Indian Penal Code read with Section 135 of the Bombay Police Act alleging *inter-alia* that the complainant's Uncle Rajansinh was forceably taken away by the accused in Maruti Van by showing a knife for some money dispute. That the offence punishable under Section 395 was added subsequently in the said complaint. The petitioner preferred anticipatory bail application under Section 438 of the Criminal Procedure Code in the Court of learned Additional

Sessions Judge, Fast Track Court No.2, Ahmedabad(Rural) and by his judgment dated 03.01.2005 allowed the said application of the petitioner for anticipatory bail on certain conditions inclusive of the condition that it will be open for the prosecution / Investigating Agency to apply for remand of the applicant. That the petitioner was arrested and released on bail by the police on 19.02.2005 and thereafter on 23.02.2005 Investigating Officer submitted a remand application in the Court of learned Chief Judicial Magistrate, Ahmedabad (Rural) asking for 10(ten) days remand of the petitioner and requested for police custody for 10 days of the petitioner. That the petitioner objected to the said remand application by objection application dated 24.02.2005. Considering the application as well as the objections, the learned Chief Judicial Magistrate, Ahmedabad (Rural) by his judgment dated 28.02.2005 partly allowed the remand application filed by the Investigating Officer and granted 3 (three) days remand to the police custody. Being aggrieved and dissatisfied with the said order dated 28.02.2005 passed by the learned Chief Judicial

Magistrate granting remand of 3(three) days to the police custody, the petitioner preferred Criminal Revision Application No. 22 of 2005 in the Court of the learned Additional Sessions Judge, Fast Track Court No.2, Ahmedabad (Rural). Considering the judgment of the Hon'ble Supreme Court in the case of ***State Represented by Inspector of Police & Ors. V/s. N.M.T.Joy Immaculate*** reported in ***(2004) 5 SCC 729,*** the learned Additional Sessions Judge dismissed the said Revision Application by holding that against the order of grant of remand, Revision Application under Section 397(2) of the Criminal Procedure Code is not maintainable as the said order being an interlocutory order. Being aggrieved and dissatisfied by the order passed by the learned Chief Judicial Magistrate granting three days remand, the petitioner has preferred the present petition under Articles 226 and 227 of the Constitution of India read with Section 482 of the Criminal Procedure Code.

3. At the outset, it is to be noted that though in the petition there is prayer in terms of Para 15(B) to quash and set aside the complaint at Annexure – A being I-C.R.No. 1145/2004, no submission

has been made by the learned Advocate appearing on behalf of the petitioner with regard to the said prayer. Therefore, this Court is considering the prayer in terms of para 15(A) only with respect to remand order passed by the learned trial Court granting three days remand.

4. Shri B.C.Dave, learned Advocate appearing on behalf of the petitioner – original accused has vehemently submitted that the police remand has been granted for the purpose which is not in existence and the purpose for which police remand was sought would be achieved interrogating the petitioner in judicial custody. He has further submitted that there is no *prima facie* case against the petitioner that he has committed any offence and therefore, as such no police remand could be granted in favour of the Investigating Agency. He has also further submitted that even the application for asking 10(ten) days remand by the police is also without any substance more particularly when the petitioner has cooperated with the investigation for all these period and whatever were the facts of the case, the petitioner has narrated before the police and the petitioner is

not knowing more than what he has said to the police at the time of interrogation. Therefore, granting remand to the police custody for 3(three) days is without any basis and same requires to be quashed and set aside. It is further submitted that remand cannot be granted for the purpose of opening mouth of the accused and/or for recovery of the *Muddamal* and/or for finding the other co-accused. He has relied upon the decision of this Court in the case of ***Pravinbhai Purshottamdas Patel & Anr. v/s. State of Gujarat & Ors.*** reported in ***2005(3) GLR 2462*** in support of above submissions that for the purpose of getting *Muddamal* remand cannot be granted. He has submitted that as such no incident has taken place and therefore, there is no question of production of Maruti Van for which remand is sought. Making above submission, he has requested to quash and set aside the order passed by the learned Chief Judicial Magistrate, Ahmedabad (Rural) granting three days remand / police custody to the police/ Investigating Officer.

5. The petition is opposed by the learned Additional Public Prosecutor. It is submitted that

whether the petitioner has *prima facie* committed any offence or nor is not required to be considered while considering order passed by the learned trial Court granting police remand. He has further submitted that it is the right of the Investigating Officer to have custodial interrogation i.e. interrogation in the police custody and in the present case there are justifiable reasons for police remand to find out truth and to find out Maruti Car as well as the names of other co-accused. He has further submitted that the order of remand cannot have any effect on the ultimate decision of the case and the remand order cannot affect the progress of the trial or its decision in any manner. He has submitted that as held by the Hon'ble Supreme Court grant of remand is an interlocutory order and therefore, Revision Application against the said order is not maintainable. In that case, the petitioner cannot get the relief by way of other proceedings under Article 227 of the Constitution of India and/or under Section 482 of the Criminal Procedure Code indirectly unless *mala-fide* are alleged against the Investigating Officer asking for remand and/or there is miscarriage

of justice. It is submitted that as such the Investigating Officer prayed for 10(ten) days, however, in the facts and circumstances of the case, the learned trial Court thought it fit to grant remand of only 3(three) days which in the facts and circumstances of the case and for the reasons for which remand is sought is not required to be interfered with. Therefore, it is requested to dismiss the present petition.

6. Heard the learned Advocates appearing on behalf of the respective parties.

7. It is required to be noted that the petitioner – original accused is charged for the offence punishable under Sections 365, 114, 294(b), 506(2) and 395 of the Indian Penal Code read with Section 135(1) of the Bombay Police Act. Looking to the allegations against the petitioner in the complaint, the allegations are very serious and the allegation is that the complainant's Uncle was forceably taken away by the accused along with other persons in Maruti Van by showing knife. After two days victim was found. The Investigating Officer

requested police remand of the petitioner for 10(ten) days for three reasons: (1) Names and address of other four co-accused who have committed offence along with the petitioner are yet to be obtained and/or they are yet to be arrested; (2) The Maruti Van which is used for commission of offence is yet to be found out and the knife used in the commission of offence is yet to be recovered and it is also to be found whether any other weapon was used or not; (3) The Muddamal is yet to be recovered. Considering the reasons for which remand was sought, the learned Chief Judicial Magistrate, Ahmedabad(Rural) granted three days remand. It is required to be noted that it will be subjective satisfaction of the Investigating Officer normally for asking remand during course of the investigation and for custodial interrogation. The remand is sought to felicitate proper and complete investigation. The Criminal Procedure Code confers a statutory right upon the Police to investigate into cognizable crime without the sanction of any judicial authority and in a serious cognizable offence, the Code authorizes the arrest and detention in custody of the offender for

the first twenty four hours without the interposition of the Magistracy and further police custody upto a period of 15 days with the authority of the Magistrate. Thus arrest and interrogation in the police custody for cognizable crime is authorized by Code. It is required to be noted that as such there are no specific allegation of *Mala-fide* against the Investigating Officer for asking remand. As held by this Court in the case of ***State of Gujarat V/s. Swami Amar Jyoti Shaym*** reported in ***1989(1) GLR 217*** in 17 of the said judgment it is held that "it is true that when the need for remand to Police Custody is made out, the Court should grant such remand and should facilitate proper and complete investigation." Looking to the allegations and reasons given for asking police remand, it cannot be said that such request can be said to be not ill-founded and/or unreasonable. When the learned trial Court has thought it fit to grant 3(three) days remand for custodial interrogation of the petitioner – accused considering the reasons for which same is sought, the same is not required to be interfered with in a petition filed under Article 227 of the Constitution

of India more particularly in absence of any allegations of *Mala-fide*. It is required to be noted that Hon'ble Supreme Court in the case of ***N.M.T.Joy Immaculate*** (*supra*) has held that order of grant of remand is an interlocutory order.

8. Under the circumstances, when the same is treated as interlocutory order, normally the same is not required to be interfered with unless it is shown that the said order is perverse and/or there is miscarriage of justice if the said order stands. By grant of three days remand, it will facilitate the Investigating Officer to investigate the complaint and offence charged against the petitioner and to find out the truth.

9. So far as the decision relied upon by Shri Dave, learned Advocate appearing on behalf of the petitioner ***Pravinbhai Purshottamdas Patel***(supra), it is to be noted that on the facts, the learned Judge has held that the order of remand was not warranted. No such absolute proposition of law has been laid down in the aforesaid judgment as sought to be canvased on behalf of the petitioner that for the

purpose of recovery of Muddamal remand cannot be sought. Prayer of remand and the reasons for the same depends upon the facts of each case and the allegations in the complaint. Under the circumstances, said decision is not helpful to the petitioner.

It is required to be noted that while granting anticipatory bail, the learned Magistrate has imposed condition that it will be open for the Investigating Officer to apply for remand and said condition was never objected by the petitioner.

10. Now considering the reasons for which remand was sought, in my opinion, all the three grounds mentioned in the application for police remand are genuine and reasonable and will help the Investigating Officer in thoroughly investigating the case and will facilitate proper and complete investigation.

11. For the reasons stated above, present application is required to be dismissed and is accordingly dismissed. Rule discharged.

12. At this stage Shri Dave, learned Advocate appearing on behalf of the petitioner has requested to continue ad-interim relief granted earlier. It is to be noted that the order of remand has been passed in the year 2005, there is already delay in the investigation and continuous of interim relief would further prejudice the investigation. However, considering the fact that all throughout there was a stay, ad-interim relief granted earlier is directed to continue up to 27th July, 2007.

[M.R.Shah, J.]

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